IN THE COURT OF APPEALS OF IOWA

No. 0-619 / 09-1505
Filed November 24, 2010

THE SWIFT, INC.,
Plaintiff-Appellant,

vs.

JOHN J. SHEFFEY and
T.N.T. SERVICES,
Defendants-Appellees.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

The Swift, Inc. appeals from the district court order denying its petition in replevin. **REVERSED AND REMANDED.**

Amanda M. Richards of Betty, Neuman & McMahon, P.L.C., Davenport, for appellant.

John Sheffey, Davenport, appellee pro se.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

A gospel music group from Tennessee known as The Swift, Inc., asks us to reverse the district court's denial of its replevin action seeking to regain possession of its customized touring van. The group's van broke down in the Quad Cities en route to a concert in Lakota, Iowa. The Swift seeks return of the van from John Sheffey,[1] a Davenport mechanic who dismantled its engine. The Swift contends the court erred in concluding it was not entitled to replevin because Sheffey possessed a valid artisan's lien. We conclude the district court erred in requiring The Swift to disprove the existence of a valid artisan's lien. Applying the correct burden of proof, Sheffey failed to show he possessed a valid artisan's lien on the vehicle. Accordingly, we reverse and remand.

I. Background Facts and Proceedings. Michael Simons teamed up with other musicians to form The Swift, a gospel music group that traveled the country performing for young people at churches and conferences. To that end, The Swift purchased a 2005 Ford E540 truck for $55,000 and spent between $14,000 and $15,000 customizing it with bunk beds and couches. While traveling through the Quad Cities on March 31, 2007, the group noticed its vehicle was having mechanical difficulties. The Swift stopped at Sergeant Peppers, a repair shop in Davenport and received a referral to Sheffey, who reportedly worked on larger vehicles.

When Sheffey inspected The Swift's vehicle, it began leaking water. Sheffey speculated the problem was related to the water pump and took the

[1] Sheffey owns and operates an automotive repair business known as T.N.T. Services. We will refer to these named defendants collectively as Sheffey.

vehicle to his shop to replace the pump. The Swift left the vehicle with Sheffey and travelled to its next show in Lakota. The following day, Sheffey called The Swift to inform the group he had discovered the radiator hose had blown off the water pump, that it was "an easy fix," and that the vehicle would be ready when the group returned to Davenport. Sheffey clamped the radiator hose and replaced the serpentine belts.

As The Swift was making its return trip to Davenport, Sheffey phoned to inform the group his repair had not fixed the vehicle's problem. He told the group there was something internally wrong with the vehicle, but he did not know what the problem was. The Swift returned to Nashville and told Sheffey to deliver word as soon as he knew what was wrong with the vehicle.

During the course of the next month, Simons called Sheffey to check on his progress in diagnosing and repairing the vehicle. In various conversations, Sheffey informed Simons that he was awaiting schematics from Ford, had removed the engine from the vehicle, and was awaiting the arrival of parts he had ordered. Simons claims Sheffey was unable to state what was wrong with the vehicle or what needed to be done to repair it.

On April 30, 2007, Sheffey faxed Simons twenty-four pages of instructions on how to repair what he believed to be the problem. Sheffey claims he sent the document at the group's behest in response to a question by one of the members as to what parts had been ordered. Sheffey also sent two invoices billing the group for the repairs: the first was the bill for the initial repair of the radiator hose and the serpentine belts for $1259.32, and the second was a bill for the work

Sheffey had performed to that point in removing the vehicle's engine for $6667.13, which included forty-five hours worth of labor charges and $2500 for parts. The parts were not itemized and Sheffey claims the exact cost was slightly more than $2500, but that he rounded down.

The Swift contacted Reynolds Ford to reassemble the engine, but when a mechanic arrived at Sheffey's to retrieve the vehicle and engine, Sheffey stated he needed payment for his services before he would release the vehicle. On December 17, 2007, The Swift made a written demand for return of the vehicle. On July 15, 2008, The Swift filed a petition in replevin against Sheffey seeking return of the vehicle and $21,658.16 for loss of use of the property.

On August 5, 2008, Sheffey answered, alleging the existence of a valid mechanic's lien on the vehicle. Sheffey also filed a cross-petition, seeking damages for diagnostics, parts, repairs, and storage fees. Sheffey dismissed his cross-petition after The Swift pointed out that a counterclaim is prohibited in a replevin action. *See* Iowa Code § 643.2 (2007) (stating that in replevin actions, "there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counterclaim").

The parties negotiated a settlement in March 2009, by which they agreed to attempt to sell the vehicle "as is" and divide the gross proceeds of the sale equally. Any offer of $20,000 or greater was required to be accepted and any offer less than that amount would be submitted to the parties for consideration. If the vehicle was not sold, the replevin action would proceed. During the ninety-day period in which the parties agreed to take offers on the vehicle, the best offer

received was $5000. The offer was not accepted and the replevin action proceeded to trial.

At the July 2009 trial, the parties stipulated the vehicle was owned by The Swift. The district court denied the writ in its August 31, 2009 ruling by concluding:

> The evidence shows that there was substantial miscommunication between the parties concerning what was authorized and what was to be charged. The Court is unable to determine that The Swift did not authorize repairs as conducted by Sheffey. Given this fact, the Court finds that Plaintiff has failed in its burden that would justify the Court ordering replevin of the vehicle without payment of the charges to Sheffey.
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> The Plaintiff cites Iowa Code section 577.1, which entitled Sheffey to an artisan's lien if he repairs, improves, or enhances the value of the vehicle with the assent of the owner, express or *implied.* The Plaintiff also cites to Iowa Code Chapter 537B, which requires a motor vehicle repair shop to do certain actions to avoid being accused of deceptive trade practices. The Court finds that the Plaintiff has failed to prove that an artisan's lien does not exist or that the Defendant engaged in deceptive practices under the Iowa Code.

II. Scope and Standard of Review. Replevin is a specialized statutory remedy with the narrow purpose of restoring the possession of property to the party entitled to possession. *Roush v. Mahaska State Bank*, 605 N.W.2d 6, 9 (Iowa 2000); *see* Iowa Code § 643.17 (2009). We review replevin actions for errors at law. *See Flickinger v. Mark IV Apartments Ass'n*, 315 N.W.2d 794, 797 (Iowa 1982). The trial court's findings of fact have the force of a jury verdict and are binding on appeal if supported by substantial evidence in the record. *Id.*

II. Analysis. The gist of a replevin action is enforcement of the plaintiff's right to immediate possession of the property wrongfully taken or detained. *Id.* at 796. Property is wrongfully detained when the defendant wrongfully withholds or

retains possession of the property sought to be recovered. *Id.* Here, the parties stipulated that The Swift owned the vehicle. The group asked Sheffey to return the vehicle to its possession and Sheffey refused. The Swift has proved the elements necessary to grant a replevin judgment.

In response to The Swift's petition, Sheffey asserted the existence of "possessory liens for mechanical work done on the vehicle and storage charges for the vehicle" and claimed Sheffey retained possession of the vehicle "under the possessory mechanics [sic] lien and storage lien against the vehicle."[2] The existence of a valid artisan's lien may be raised and tried in a replevin action as an affirmative defense. *Stoner v. Verhey*, 335 N.W.2d 636, 637 (Iowa 1983). Where the defendant raises an affirmative defense, the defendant has the burden of proving that defense by a preponderance of the evidence. *Hillview Assoc. v. Bloomquist*, 440 N.W.2d 867, 869 (Iowa 1989).

> Pursuant to Iowa Code section 577.1, a person who
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> > renders any material in the making, repairing, improving, or enhancing the value of any inanimate personal property with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for the service and material while such property is lawfully in the person's possession, which possession the person may retain until such compensation is paid . . . .

To show the existence of a valid artisan's lien, Sheffey was required to prove, first, the performance of a service in the making, repairing, improving, or enhancing the value of the vehicle, and second, that he performed the service

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[2] A mechanic's lien is available to a person who furnishes material or labor on any building or land. Iowa Code § 572.2(1). An artisan's lien is available to a person who renders a service or material in making or repairing inanimate personal property. *Id.* § 577.1(1).

with The Swift's assent. The Swift argues Sheffey failed to prove either element by a preponderance of the evidence. It also argues the district court erred in shifting the burden of proof to require The Swift to show an artisan's lien did not exist.

Turning first to the issue of assent, we find it to be conclusive. The district court essentially determined that the evidence on assent was in equipoise, finding "substantial miscommunication between the parties concerning what was authorized and what was to be charged." The court concluded it was "unable to determine that The Swift did not authorize repairs as conducted by Sheffey." Unable to determine the lack of assent, the court relied on the burden of proof to decide the question. But the court erred in assigning the burden of disproving the issue of assent to Swift rather than requiring Sheffey to prove by a preponderance of the evidence that assent was given. When applying the correct burden of proof, there is inadequate evidence from which to find assent; Sheffey is unable to meet his burden to show the miscommunication amounted to The Swift's assent to dismantling the engine. Where evidence is in equipoise, the party who bears the burden of proof cannot prevail. *See Greenberg v. Alter Co.*, 255 Iowa 899, 905, 124 N.W.2d 438, 442 (1963) (holding that where "the best that can be said is the evidence is in equipoise," the plaintiff has not carried the burden of proof by a preponderance of the evidence); *see also State v. Forsyth*, 547 N.W.2d 833, 838 (Iowa Ct. App. 1996) (holding the burden to prove competency rests with the accused; when evidence is in equipoise, the presumption of competency prevails). We conclude there is insufficient evidence

Sheffey had a valid artisan's lien on the vehicle. Without such proof, Sheffey wrongfully possessed The Swift's vehicle after The Swift requested its return.

Because Sheffey failed to prove the existence of a valid artisan's lien by a preponderance of the evidence, the district court should have granted replevin judgment in favor of The Swift. We reverse the district court's order denying the petition and remand for entry of judgment in favor of The Swift. On remand, the district court should order possession of the vehicle returned to The Swift and determine its damages for loss of its use of the vehicle.

REVERSED AND REMANDED.

Potterfield, J., concurs, Sackett, C.J., dissents.

SACKETT, C.J. (dissents)

I respectfully dissent. I would affirm the result reached by the district court.